

**TOWN OF FAIRFAX  
STAFF REPORT**

**To: Planning Commission**

**From: Jim Moore, Director of Planning & Building Services**

**Date: December 17, 2015**

**SUBJECT: CONSIDERATION OF AN ORDINANCE OF THE TOWN OF FAIRFAX  
AMENDING SECTION 17.138.010 (EMERGENCY HOMELESS SHELTER  
STANDARDS) OF TITLE 17 (ZONING) OF THE FAIRFAX TOWN CODE**

**BACKGROUND**

California Government Code § 65583(a)(4) generally requires that the housing element of each town or city identify a zoning district or districts where emergency homeless shelters are allowed as a permitted use without a conditional use permit or other discretionary approvals.

Earlier this year as part of the 2015 Housing Element update process, staff was advised by the California Department of Housing and Community Development (HCD) that not only was the Town required to adopt the updated 2015 Housing Element by May 31, 2015, in order for Town inclusion in an eight (8) year cycle/period for the next required update (e.g., the Town will not have to revisit the Housing Element until eight years from now rather than four (4) year from now – avoiding extensive staff time and consultant costs), it must also pass an Emergency Homeless Shelter ordinance by May 31, 2015.

On **March 19, 2015**, after receiving a staff report and holding a duly noticed public hearing, the Planning Commission, adopted a Resolution recommending that the Town Council adopt an Emergency Homeless Shelter Ordinance as called for in the (then draft) 2015 update to the Housing Element of the Fairfax 2010-2030 General.

On **May 6, 2015**, the Town Council adopted Ordinance No. 788, an Ordinance that resulted in the following: (1) amendment of Town Code Chapter 17.008 ("Definitions") to provide a definition for "Emergency Shelters";(2) amendment of Chapter 17.012 ('Zone Districts Established') to establish a Public Domain (PD) Zoning District and rezone parcels to the PD Zoning District; (3) amendment of Chapter 17.100 ('CC Central Commercial Zoning District') to allow Emergency Homeless Shelters as a permitted use; (4) inclusion of Chapter 17.130 ('PD Public Domain Zoning District') to create a Public Domain Zoning District that includes Emergency Shelters as a permitted use; (5) inclusion of Chapter 17.138 ('Regulations Applying in Multiple Zoning Districts') to establish Emergency Homeless Shelter Standards; and (6) amendment of the Town of Fairfax Zoning Map, accordingly.

On **May 27, 2015**, the Town Council approved Resolution No. 15-13, resulting in the adoption of the 2015 update of the 2010 Housing Element as well as the adoption of the Addendum to the Mitigated Negative Declaration and required findings pursuant to the California Environmental Quality Act (CEQA), for the Fairfax 2010-2030 General Plan.

## DISCUSSION

In its "Conditional Letter of Compliance", dated **August 11, 2015**, regarding the 2015 Housing Element update, the California Department of Housing and Community Development (HCD) stated that:

*"Some provisions referenced in Ordinance No. 788, such as the requirement for management plan approval by the Planning Director, do not appear consistent with development standards specified in GC 65583(a)(4)(A) and warrant analysis as potential constraints. The Town of Fairfax should amend its zoning ordinance to ensure standards are consistent with SB 2, particularly to ensure management plan standards are objective and that approval is not discretionary."*

Accordingly, staff has prepared modifications to the Emergency Homeless Shelter Ordinance (**Attachment A**) for Planning Commission consideration. To address HCD's concern with the "requirement for management plan approval by the Planning Director" the revisions do not actually call for approval of a plan, but rather just the submittal of plan, the identification of security measures, and that the operator's security measures must be objectively sufficient to provide security to shelter residents and neighboring land uses.

Please note: HCD has reviewed the attached language modifications and has indicated that they are acceptable.

## CEQA REVIEW

The adoption of the Ordinance is exempt from the California Environmental Quality Act (CEQA) because it is covered by the general rule set forth in 14 C.C.R. § 15061(b)(3) that states that CEQA applies only to projects that have the potential to cause a significant effect on the environment. Here, the amendment of the on-site management provisions pertaining to emergency shelter operations have no potential to cause a significant effect on the environment and is thus not subject to CEQA review.

## RECOMMENDATION

- 1) Conduct the public hearing
- 2) Adopt Resolution No. 15-39 (**Attachment B**) recommending Town Council adoption of Ordinance No. 15-XX

## ATTACHMENTS

Attachment A – Ordinance No. 15 – XX

Attachment B – Resolution No. 15 – 39

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE TOWN OF FAIRFAX AMENDING SECTION 17.138.010  
(‘EMERGENCY HOMELESS SHELTER STANDARDS’)  
OF TITLE 17 (‘ZONING’) OF THE FAIRFAX TOWN CODE**

**WHEREAS**, California Government Code Section 65583(a)(4)(A) sets forth the scope of development and management standards that local governments may impose in regulating emergency shelters for the homeless; and

**WHEREAS**, according to the State Department of Housing and Community Development, “[a]ppropriate management standards are reasonable and limited to ensure the operation and maintenance of the property,” and

**WHEREAS**, the Town of Fairfax regulates emergency homeless shelters through its Town Code Section 17.138.010; and

**WHEREAS**, the City Council wishes to amend Section 17.138.010 to modify the on-site management standards provided therein.

**NOW, THEREFORE**, the Town Council of the Town of Fairfax does ordain as follows:

**SECTION 1:** Subsection ‘D’ (‘On-site management’) of Section 17.138.010 (‘Emergency Homeless Shelter Standards’) of Chapter 17.138 (‘Regulations Applying in Multiple Zoning Districts’) of Title 17 (‘Zoning’) of the Fairfax Town Code is hereby amended to read as follows:

“(D) On-site management. In order to ensure the operation and maintenance of the property upon which an emergency shelter is operated, the operator of an emergency homeless shelter shall submit a management plan to the Planning Director that includes the following information: the operator’s qualifications to operate the emergency shelter; the identification of the on-site staff person designated as a neighborhood liaison to respond to, and address, any questions or concerns from surrounding residents regarding facility operations; the operator’s security measures to protect shelter residents and neighboring land uses (which measures must be objectively sufficient to provide such security); a list of services offered by the shelter to assist emergency shelter residents with obtaining permanent shelter; and a method of screening emergency shelter residents to ensure compatibility with services provided at or through the emergency shelter prior to admittance to the shelter.”

The remainder of Section 17.138.010 shall remain unchanged.

**SECTION 2:** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Town Council hereby declares that it would have passed this Ordinance and each section,

**ATTACHMENT A**

subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 3: This Ordinance is exempt from the requirements of the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and as further governed by 14 California Code of Regulations §§ 15000, *et seq.*, collectively, "CEQA") because it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Here, the amendment of the on-site management provisions pertaining to emergency shelter operation have no potential to cause a significant effect on the environment and is thus not subject to CEQA.

SECTION 4: This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

1. Bulletin Board, Town Hall Offices, located at 142 Bolinas Road, Fairfax;
2. Bulletin Board, Fairfax Post Office, located at 773 Center Boulevard, Fairfax; and
3. Bulletin Board, Fairfax Women's Club building, located at 46 Park Road, Fairfax.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the \_\_th day of \_\_\_\_\_ 2015, and duly adopted at the next regular meeting of the Town Council on the \_\_ day of \_\_\_\_\_, 2015, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Renee Goddard, Mayor

Attest:

\_\_\_\_\_  
Michele Gardner, Town Clerk

\_\_\_\_\_  
Date

**RESOLUTION NO. 15-39**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX  
RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. \_\_\_\_\_ AMENDING  
SECTION 17.138.010 ('EMERGENCY HOMELESS SHELTER STANDARDS') OF TITLE 17  
( 'ZONING' ) OF THE FAIRFAX TOWN CODE**

**WHEREAS**, on May 6, 2015, the Town Council adopted Ordinance No. 788, amending the zoning ordinance of the Fairfax Town Code to include procedures and standards for the approval of emergency homeless shelters as permitted uses within certain zoning districts, subject to such uses meeting enumerated development standards; and

**WHEREAS**, by letter dated August 11, 2015, the State of California Department of Housing and Community Development advised the Town that the Department had reviewed Ordinance 788 and had determined that certain provisions related to the on-site management of emergency homeless shelters within said Ordinance required revision in order to ensure that the standards were objective and that approval of such uses was not subject to the exercise of discretion; and

**WHEREAS**, in response to this direction from the Department, staff has prepared amendments to the Emergency Shelter Ordinance (a true and correct copy of which is attached as **Attachment 1** hereto); and

**WHEREAS**, staff has submitted these proposed revisions to the Department and has received written confirmation from Department staff that the proposed revisions are acceptable; and

**WHEREAS**, the adoption of the proposed ordinance is exempt from the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and 14 California Code of Regulations §§ 15000, *et seq.*, collectively, "CEQA") because it is covered by the general rule set forth in 14 C.C.R. § 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Here, the amendment of the emergency homeless shelter ordinance's on-site management provisions have no potential to cause a significant effect on the environment and is thus not subject to CEQA; and

**WHEREAS**, in accordance with the State Planning and Zoning Law, the Planning Commission is tasked with considering whether any proposed amendment to the Town's zoning ordinance would be in conformance with the terms of the Town's general plan, and the Planning Commission has determined that the proposed Ordinance would, in fact, conform to the Town's General Plan based on the following:

The terms of the proposed ordinance will revise the standards applicable to the on-site management of emergency homeless shelters in accordance with SB 2 thereby implementing Fairfax General Plan Housing Element Policy H-2.1.6, which states, "[a]mend the Zoning Code to Comply with SB 2. Consistent with SB 2 (GC Sections 65582, 65583, and 65589.5), the Town will establish zoning designations for transitional and supportive housing, and will define "transitional housing" and "supportive housing" in the Zoning Ordinance. The Town will establish procedures to encourage and facilitate the creation of emergency shelters and transitional and supportive housing, and link this

**ATTACHMENT B**

housing to programs of the Department of Health and Human Services whenever possible;" and

**WHEREAS**, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, hear the presentation of a staff report, and receive public comment on the matter.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the Town of Fairfax as follows:

**SECTION 1.** The recitals set forth above are adopted as further findings of the Planning Commission.

**SECTION 2.** The Planning Commission has reviewed the draft ordinance attached hereto as **Attachment 1** and finds that it is consistent with the Town General Plan, as set forth above.

**SECTION 3.** The Planning Commission hereby recommends that the Town Council adopt **Attachment 1** hereto in order to amend the Fairfax Town Code to adopt emergency homeless shelter management standards in accordance with Government Code Section 65583(a)(4).

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the 17th day of December 2015 by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Philip Green, Chair

Attest:

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Jim Moore, Secretary